No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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CURTIS DWAYNE MEDRANO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

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/s/ Kevin Joel Page


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## INDEX TO APPENDICES

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
March 26, 2025
Lyle W. Cayce
Clerk

No. 23-10713
Summary Calendar

UNITED STATES OF AMERICA,

*Plaintiff—Appellee*,

*versus*

CURTIS DWAYNE MEDRANO,

*Defendant—Appellant*.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:23-CR-42-1

Before RICHMAN, DOUGLAS, and RAMIREZ, *Circuit Judges*.

PER CURIAM:[*]

Curtis Dwayne Medrano appeals his 120-month above-guidelines sentence imposed following his conviction for possession of a firearm by a convicted felon. Medrano argues that 18 U.S.C. § 922(g)(1) is unconstitutional, facially and as applied, in light of the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

(2022). Medrano also argues that the district court plainly erred in calculating his criminal history score by including one criminal history point for his prior evading arrest conviction, for which he was sentenced to three days of imprisonment, because the conviction should have been excluded from his criminal history calculation pursuant to U.S.S.G. § 4A1.2(c)(1).

We recently upheld the constitutionality of § 922(g)(1) both facially and in similar as-applied circumstances. *See United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *petition for cert. filed*, No. 24-6625 (U.S. Feb. 18, 2025). Because the court's decision in *Diaz* was at least one "set of circumstances . . . under which the statute would be valid," *Diaz* forecloses Medrano's challenge to the facial constitutionality of § 922(g)(1). *See id.* (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Furthermore, because Medrano has a prior felony conviction for vehicle theft, and because the court in *Diaz* concluded § 922(g)(1) was constitutional as applied to defendants with underlying felony convictions involving theft, *Diaz* also forecloses Medrano's as-applied challenge to the constitutionality of § 922(g)(1).

Medrano did not raise his challenge to the calculation of his criminal history category in the district court, so we review only for plain error. *See United States v. Soza*, 874 F.3d 884, 889 (5th Cir. 2017). Accordingly, Medrano must demonstrate a clear or obvious error that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

Certain misdemeanor offenses and "offenses similar to them, by whatever name they are known," including "[r]esisting arrest," are excluded from the calculation of a defendant's criminal history category unless the sentence imposed "was a term of probation of more than one year or a term of imprisonment of at least thirty days" or unless "the prior offense was similar to an instant offense." U.S.S.G. § 4A1.2(c)(1). The word "offense"

as used in § 4A1.2(c)(1) includes any relevant conduct. *See United States v. Moore*, 997 F.2d 30, 34-35 (5th Cir. 1993).

We have previously ruled that an offense for "evading arrest" is similar to the offense of "resisting arrest" as enumerated in § 4A1.2(c)(1). *See Moore*, 997 F.2d at 34-35. Because the sentence for Medrano's prior evading arrest conviction was not a term of imprisonment of at least thirty days or a term of probation of more than one year, and because the offense of evading arrest is not similar to the instant offense of possession of a firearm by a felon, either facially or in the factual background of Medrano's offenses, the district court committed a clear or obvious error in assessing one criminal history point to Medrano for this offense. *See* U.S.S.G. § 4A1.2(c)(1).

However, whether this error is clear or obvious is non-determinative because Medrano has not shown that the error affected his substantial rights. *See Puckett*, 556 U.S. at 135. The district court found that the guidelines range did not adequately reflect the seriousness of Medrano's conduct and stated that it would have imposed the same above-guidelines sentence even if it erred in its guidelines calculations. Accordingly, Medrano has not shown that the error affected his substantial rights by demonstrating a reasonable probability that but for the error he would have received a lower sentence. *See United States v. Zarco-Beiza*, 24 F.4th 477, 483 (5th Cir. 2022); *see also, e.g.*, *United States v. Nino-Carreon*, 910 F.3d 194, 197-98 (5th Cir. 2018).

The judgment of the district court is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | CASE NO. 4:23-CR-00042-O |
| | ) | |
| Government, | ) | FORT WORTH, TEXAS |
| | ) | |
| VS. | ) | JULY 7, 2023 |
| | ) | |
| CURTIS DWAYNE MEDRANO, | ) | |
| | ) | |
| Defendant. | ) | 8:53 A.M. |

VOLUME 1 of 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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The above styled and numbered cause was reported by computerized stenography and produced by computer.

I N D E X

P R O C E E D I N G S

July 7, 2023

oOo

THE COURT: I call Case No. 4:23-CR-42.

Counsel for the government is here.

Counsel for the defendant is here.

Can you state your name for the record, please?

THE DEFENDANT: Curtis Medrano.

THE COURT: All right. Thank you, sir. We are here to consider the sentencing in your case.

Counsel, did you and your client receive a copy of the presentence investigation report?

MR. WEINBEL: Yes, your Honor.

THE COURT: And have you reviewed that document with your client?

MR. WEINBEL: Yes, your Honor.

THE COURT: Did the government receive this?

MR. THOMAS: Yes, your Honor.

THE COURT: All right. I adopt the fact findings in this document. I adopt the probation officer's conclusions as to the appropriate guideline calculations and determine that they should be as follows: A total offense level of 21; a Criminal History Category of V; an imprisonment range of between 70 and 87 months; a supervised release range of one to three years; and a fine range of

between $15,000 and $150,000.

Does the government wish to be heard on sentencing?

MR. THOMAS: Yes, briefly, your Honor.

Your Honor, the government would just simply highlight the nature and seriousness of the offense and the need for just punishment here.

Beyond that of a typical felon in possession of a firearm case, this one did involve a victim. The victim has essentially wished to not be a part of these proceedings, but there was a victim.

He was shot through the back by the defendant and it injured his heart, his lungs, and his kidneys. It's a miracle that he ultimately survived.

And so, the government would ask the Court to take that fully into consideration, and that the sentence imposed here provide just punishment for that conduct.

THE COURT: Thank you.

Counsel, I will turn the floor over to you.

MR. WEINBEL: Thank you, your Honor.

Talking about Mr. Medrano's upbringing, like a lot of people we see in here, he had a very tumultuous upbringing, where he basically had to parent himself because of his parents' actions. He found himself down in Texas where he has slowly grown into a more calm atmosphere.

He has four kids with Miss Amanda Van Schuyver, and they were doing quite well prior to this incident. With this incident himself, Mr. Medrano understood that he should not have a firearm. And the firearm in question, he did not buy or try to own.

This was a case where he was in the wrong place at the wrong time. He was inside of a vehicle that he had borrowed from a friend. The firearm was inside the vehicle.

He had an incident with another driver. The other driver was driving erratically, as is said in the police report, and Mr. Medrano had the wrong reaction. He understands that.

We would agree with the government, in that, the punishment should be just and fit this. And I believe that the guidelines that are given do appropriately account for everything.

There are points added to his base level offense, because of the firing of the firearm and the injury to the victim. So we believe a guideline sentence, we would ask for 70 months, at the bottom of the guidelines, but is appropriate at this time.

THE COURT: Thank you.

Sir, do you wish to speak on your behalf?

THE DEFENDANT: Yes, your Honor. I would like to say that I apologize for my actions. It was unfortunate

what happened. Yeah, I've been doing good for myself. You know, I work, just ready to get back to my family and everything. Thank you.

THE COURT: Thank you. And I neglected to point out that I've reviewed the letters that your counsel has provided me in advance describing your background and foster care, mental health issues, and those sorts of things. So I apologize for not making note of that.

I will now state the sentence determined pursuant to Title 18 U.S.C., Section 3553. It will be the judgment of the Court that the defendant is committed to the custody of the Federal Bureau of Prisons for a period of 120 months.

This is an upward variance. The sentence shall run concurrent with any future sentence which may be imposed in Case Nos. 1755817D, and 1755820D, pending in Criminal District Court No. 2 of Tarrant County, Texas.

I do not order a fine.

I do order that the defendant's interest in the pistol bearing serial number ACJ274843 and all accompanying magazines, accessories, and ammunition be forfeited to the United States.

I order that, upon your release, you be placed on supervised release for a term of three years.

While on release, you shall comply with the terms of supervision set forth in Miscellaneous Order No. 64 and

as outlined in Part G of the presentence report.

I also order a mandatory special assessment of $100.

I have considered the mitigating evidence discussed in the letters provided to me as part of the sentencing presentation, as well as the background information and mental health issues from the presentence investigation report that are primarily discussed in paragraph 58.

After balancing that information with the facts underlying the offense of conviction, I conclude an upward variance is warranted.

While the guidelines do make an adjustment for the injured party's injuries, they inadequately do so. After the injured party drove erratically and cut off the defendant and displayed an obscene gesture, the defendant, while driving down the road, fired nine rounds at the car.

The injured party was seriously injured and others were at risk. The guidelines simply do not adequately address these injuries and the dangerousness of the conduct to others.

And for this reason, I believe that, when considering the 3553(a) factors, to afford just punishment for this particular offense and to afford adequate protection and protect the public from further crimes of the

defendant, given his criminal history, I believe that this is the appropriate sentence, and that it is sufficient but not greater than necessary to comply with the statutory purposes of sentencing.

Is there any objection from the government to this sentence?

MR. THOMAS: No, your Honor.

THE COURT: From the defendant?

MR. WEINBEL: No objection, your Honor. We would just ask for placement as close to home as possible. With respect to maybe a medical facility, he has the early, early stages of colon cancer, and we need a medical facility that is best that he get help at.

THE COURT: So I will recommend that he be housed at a facility that can accommodate his medical needs.

Then I order this sentence imposed as stated.

Now, you have the right to appeal this sentence. You also have the right to apply for leave to appeal in forma pauperis, if you are unable to pay the cost of an appeal.

And if you decide to appeal, your notice must be filed within 14 days. Please instruct your counsel on how you wish to proceed in that regard.

Please follow your client's instructions.

Anything else from the government?

MR. THOMAS: No, your Honor.

THE COURT: From the defendant?

MR. WEINBEL: No, your Honor.

THE COURT: Then thank you both for being here.

Good luck to you, sir.

We are in recess on this case.

(The proceedings concluded at 9:00 a.m.)

REPORTER'S CERTIFICATE

I, ZOIE WILLIAMS, RMR, RDR, FCRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter to the best of my ability to hear.

Further, due to the COVID-19 pandemic, some participants are wearing masks, and/or appeared via videoconferencing, so proceedings were transcribed to the best of my ability.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 18th day of August, 2023.

___/s/ Zoie Williams_____
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff, | §<br>§<br>§ | |
| v. | § | Case No. 4:23-CR-042-O |
| CURTIS DWAYNE MEDRANO<br>Defendant. | §<br>§<br>§ | |

**DEFENDANT'S MOTION TO DISMISS COUNT ONE OF THE INDICTMENT**

Defendant Curtis Dwayne Medrano moves to dismiss the indictment because it charges an offense—the "possess" prong of 18 U.S.C. § 922(g)(1)—that Congress had no power to enact.

**Introduction and Background**

The grand jury alleged that, on or about November 9, 2022 Defendant violated the possession prong of 18 U.S.C. § 922(g)(1) and § 924(a)(8)]. Section 922(g)(1) provides, in pertinent part:

> (g) It shall be unlawful for any person— (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year . . . to ship or transport in interstate or foreign commerce, *or possess in or affecting commerce, any firearm* or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(1) (emphasis added).

Laws completely banning felons from possessing firearms did not exist at the time of the founding or at the ratification of the Second Amendment. *See*, e.g., *Kanter v. Barr*, 919 F.3d 437, 462 (7th Cir. 2019) (Barrett, J., dissenting), *abrogated on other grounds by New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) (recognizing that "scholars have not identified eighteenth or nineteenth century laws depriving felons of the right to bear arms"). The

current federal ban first appeared in 1968. Even so, courts have thus far upheld § 922(g)(1) against constitutional attack.

## Legal Standard

Federal Rule of Criminal Procedure 12(b)(1) allows a defendant to "raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits." In deciding the motion, the Court should "take the allegations of the indictment as true." *United States v. Kay*, 359 F.3d 738, 742 (5th Cir. 2004) (quoting *United States v. Hogue*, 132 F.3d 1087, 1089 (5th Cir. 1998)). The balance of this motion thus assumes that the Government will prove, beyond a reasonable doubt, the facts alleged in Count One the indictment.

## Argument

This Court should dismiss Count One of the indictment because the "possess" prong of 18 U.S.C. § 922(g)(1), as commonly understood and applied, violates the Constitution. First, it exceeds Congress's powers under the interstate commerce clause. Second, it violates the Second Amendment.

### A. The "possession" prong of Section 922(g) exceeds Congress's power under the Commerce Clause.

Unlike the states, Congress does not have a general police power. "The Constitution creates a Federal Government of enumerated powers." *United States v. Lopez*, 514 U.S. 549, 552 (1995) (citing U.S. Const., Art. I, § 8, and James Madison, *The Federalist* No. 45, pp. 292–293 (C. Rossiter ed. 1961)). The only enumerated power that might justify laws like § 922(g) is the

Commerce Clause: "Congress shall have power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . ." U.S. Const., Art. I, § 8.

The Supreme Court has "identified three broad categories of activity that Congress may regulate under its commerce power":

> [1] Congress may regulate the use of the channels of interstate commerce. . . .
>
> [2] Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. . . . [and]
>
> [3] Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce.

*Lopez*, 514 U.S. at 558–59 (citations omitted).

Section 922(g)'s possession prong is widely understood to reach *any* act of gun possession if the firearm itself, or even any component used to make the firearm, later travels across a state or international boundary line.[1] This construction of the statute reaches a broad swath of non-commercial activity that has no connection at all to any of these authorized areas of regulation.

Defendant concedes that courts have thus far rejected both the *statutory* argument (that

[1] Defendant does not agree that this is a correct understanding of the statutory language. The common reading of "possess *in or affecting commerce*" elides the distinction between this nexus element and the nexus element that applies to *receiving* firearms—which is properly understood to reach only *commercial* purchase or acquisition: "to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." By using *different language* to define the federal-nexus element for possession, Congress surely intended a *different meaning* than the nexus element for receipt. *Russello v. United States*, 464 U.S. 16, 23 (1983)("[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.")(quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th 1972). Moreover, the common interpretation of the statute presents constitutional problems that should be avoided by a more narrow reading.

"possess in or affecting commerce" means something other than the object passed across a state or international boundary at some point in the past) and the *constitutional* argument (that the statute exceeds Congress's power). There are many cases rejecting these arguments in the Fifth Circuit and elsewhere. A sampling of those adverse decisions is provided below.

1. *United States v. Bass*, 404 U.S. 336 (1971), is a statutory interpretation case about an abrogated statute:

> 'Any person who—
>
> (1) has been convicted by a court of the United States or of a State or any political subdivision thereof of a felony . . . *and who receives, possesses, or transports in commerce or affecting commerce . . . any firearm* shall be fined not more than $10,000 or imprisoned for not more than two years, or both.'

*Bass*, 404 U.S. at 337 (emphasis added) (quoting Section 1201(a) of Title VII of the Gun Control Act of 1968, Pub. L. 90-351, 82 Stat. 236). The Supreme Court held that the statutory language "in commerce or affecting commerce" applied to the crimes of receipt and possession, not just to transportation. The court then went on to muse—in dicta— that the crime of "'receiv(ing) . . . in commerce or affecting commerce,'" could be proven if the evidence "demonstrates that the firearm received has previously traveled in interstate commerce." 404 U.S. at 350.

2. Six years later, the Supreme Court recognized that the holding of *Bass* was limited to the nexus element applying to receipt and possession; the "suggestions" of ways to satisfy the element were "unnecessary" to the decision. *Scarborough v. United States*, 431 U.S. 563, 568 (1977). But *Scarborough* affirmed a conviction under that theory, rejecting the defendant's suggestion that it is "not enough that the Government merely show that the firearms at some time had travelled in interstate commerce." *Id.* at 566. As a matter of statutory interpretation, the Court held that "Congress intended no more than a minimal nexus requirement." *Scarborough*, 431 U.S. at 577.

3. In the first precedential decision to consider the felon-in-possession crime after *Lopez*, the Fifth Circuit held that *Scarborough*'s statutory interpretation holding also foreclosed the constitutional challenge to that theory:

> As we noted on direct appeal, an ATF weapons expert testified at Rawls' trial that the revolver he possessed was manufactured in Massachusetts, so that the revolver's presence in Texas had to result from transport in interstate commerce. This evidence is sufficient to establish a past connection between the firearm and interstate commerce.

*United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996).

4. Subsequent Fifth Circuit decisions have continued to affirm this reading of § 922(g)'s "in or affecting commerce" language against statutory and constitutional challenges.

5. *Lopez* seemed to, but did not expressly, overrule the more permissive test for federal regulation of gun possession articulated in *Scarborough*. A fair reading of *Scarborough* suggests that the case was concerned solely with statutory interpretation and did not purport to resolve any constitutional issues. *See United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc).

6. Supreme Court Justices and judges on lower courts have acknowledged the irreconcilability of *Lopez* and a constitutional reading of *Scarborough*. *See Alderman v. United States*, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from denial of certiorari) ("*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez*."); *see also United States* v. *Hill*, 927 F.3d 188, 215 n.10 (4th Cir. 2019) (Agee, J., dissenting) ("While some tension exists between *Scarborough* and the Supreme Court's decision in *Lopez*, the Supreme Court has not granted certiorari on a case that would provide further guidance"); *United States* v. *Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting) ("[T]he precise holding in *Scarborough* is in fundamental and irreconcilable conflict with the rationale of" *Lopez*.). Judge Ho's opinion dissenting from denial of rehearing en banc in *Seekins* is the most recent and

thorough objection to the established view. 52 F.4th at 980–92. "In the en banc poll, seven judges voted in favor of rehearing" "and nine voted against rehearing." *Seekins*, 52 F.4th 988 (5th Cir. 2022).

7. If *Scarborough* is a constitutional decision, then it grants the federal government unlimited power to regulate the affairs of Americans. *See Alderman*, 131 S. Ct. at 702–03 (Thomas, J., dissenting from denial of certiorari) ("The lower courts' reading of *Scarborough*, by trumping the *Lopez* framework, could very well remove any limit on the commerce power."). Any physical object has almost certainly crossed a state line at some point in the past. To hold that this past travel grants Congress a perpetual right to regulate what someone does or does not do with that object is to eliminate any restrictions on Congress's power. Five Justices again rejected the view that the Commerce Clause grants the federal government power "to regulate an individual from cradle to grave." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 557–58 (2012) (Roberts, J.); *see also id.* at 649 (Scalia, Kennedy, Thomas, Alito, JJ., dissenting).

8. Thus far, the Fifth Circuit has adhered to the view that *Scarborough*'s "minimal nexus" is sufficient both to prove guilt under the statute and to bring any subsequent act of possession within Congress's power to regulate. *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013).

Defendant urges the Court to hold that Section 922(g)'s possession prong, as commonly understood and applied, exceeds Congress's enumerated powers.

**B. Section 922(g)(1)'s possession prong is unconstitutional under the Second Amendment.**

"When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its

regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2129–30. The text of the Amendment— "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed," U.S. Const., amend. II—"'guarantee[s] the individual right to possess and carry weapons in case of confrontation' that does not depend on service in the militia." *Bruen*, 142 S. Ct. at 2127.

In *United States v. Darrington*, 351 F.3d 632, 633–34 (5th Cir. 2003), the Fifth Circuit held that 18 U.S.C. § 922(g)(1) "does not violate the Second Amendment." When the Supreme Court later decided *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Court mused: "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Id.* at 626. Relying on that language, the Fifth Circuit has stated that "*Heller* provides no basis for reconsidering *Darrington*." *United States v. Anderson*, 559 F.3d 348, 352 (5th Cir. 2009).

In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2126 (2022), the Supreme Court upended the two-step framework the Fifth Circuit and other courts used to review Second Amendment challenges:

> We hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individu-al's conduct falls outside the Second Amendment's "unqualified command."

*Bruen*, 142 S. Ct. at 2126.

Before *Bruen*, the Fifth Circuit had reasoned that § 922(g)(1) is a "longstanding" prohibition even though "it cannot boast a precise founding-era analogue." *Nat'l Rifle Ass'n of*

*Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 196 (5th Cir. 2012), abrogated by *Bruen*, 142 S. Ct. at 2126. But *Bruen*'s focus on tradition and history—and its prohibition on considering the *wisdom* of a prohibition—casts doubt on *Heller*'s dicta about felon disarmament. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Bruen*, 142 S. Ct. at 2136 (quoting *Heller*, 554 U.S. at 634–635) (emphasis in *Bruen*). Ex-felons who have completed their sentences are among "the people" protected by the First, Second, and Fourth Amendments to the Constitution. Section 922(g)(1)'s possession prong entirely deprives them of the right to possess firearms for self defense, in the home or elsewhere. And the Government cannot bear the heavy burden of establishing that this law is consistent with the nation's tradition of firearm regulation.

**1. The Second Amendment's plain text covers the conduct prohibited by § 922(g)(1)'s possession prong.**

"[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 142 S. Ct. at 2126. There can be no doubt that § 922(g)(1)'s possession prong prohibits the very conduct protected by the Second Amendment's "operative clause"—that is, "to possess and carry weapons in case of confrontation." *See Bruen*, 142 S. Ct. at 2134 (quoting *Heller*, 554 U.S. at 592). The complete prohibition applies everywhere—at home, in public, in transit, or at rest. And it applies throughout the duration of an ex-felon's life.

And the statute plainly disarms members of "the people" protected by the Second Amendment. That term "refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). After conviction

and after serving their sentences, ex-felons are restored to the rights of citizenship and retain their place among "the people" who are entitled to the protections of the First, Second, Fourth, Ninth, and Tenth Amendments to the Constitution. "[T]he Second Amendment's plain text covers" the "conduct" prohibited by § 922(g)(1)'s possession prong, and "the Constitution presumptively protects that conduct." *See Bruen*, 142 S. Ct. at 2129–30. At the very least, ex-felons have rejoined the political community and become part of "the people" in states like Texas, where they enjoy the right to vote. Tex. Election Code §11.002(a)(4).

**2. The Government cannot show that the possession prong is consistent with history and tradition.**

Under *Bruen*, the government bears the burden of proving § 922(g)(1)'s constitutionality. 142 S. Ct. at 2130. After *Bruen*, the government must "justify" § 922(g)(1)'s possession prong "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 142 S. Ct. at 2130. It cannot carry that burden here.

"Though recognizing the hazard of trying to prove a negative, one can with a good degree of confidence say that bans on convicts possessing firearms were unknown before World War I." C. Kevin Marshall, *Why Can't Martha Stewart Have A Gun?*, 32 Harv. J. L. & Pub. Pol'y 695, 708 (2009); *see also* Adam Winkler, *Heller's Catch-22*, 56 UCLA L. Rev. 1551, 1563 (2009) ("The Founding generation had no laws . . . denying the right to people convicted of crimes."). Professor Carlton Larson performed a historical study and found no analogs for § 922(g) in the 17th, 18th, or 19th centuries:

> As far as I can determine, state laws prohibiting felons from pos-sessing firearms or denying firearms licenses to felons date from the early part of the twentieth century. The earliest such law was enacted in New York in 1897, and similar laws were passed by Illinois in 1919, New Hampshire, North Dakota, and California in 1923, and Nevada in 1925.

Carlton F.W. Larson, *Four Exceptions in Search of A Theory: District of Columbia v. Heller and Judicial Ipse Dixit*, 60 Hastings L. J. 1371, 1376 (2009).

**Conclusion**

For all these reasons, Defendant asks that the Court dismiss Count 1 of the Indictment.

BY: */s/ Christopher Weinbel*
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**CERTIFICATE OF SERVICE**

I, Christopher Weinbel, hereby certify that on this the 28th day of February 2023, I electronically filed this document with the Clerk of the United States District Court, Northern District of Texas, using the Court's electronic filing system. This system sent a "Notice of Electronic Filing" to the United States Attorney.

*/s/ Christopher Weinbel*
CHRISTOPHER WEINBEL
Assistant Federal Public Defender

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA<br><br>v.<br><br>CURTIS DWAYNE MEDRANO (1) | No. 4:23-CR-042-O |

**RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

TO THE HONORABLE REED O'CONNOR, U.S. DISTRICT JUDGE:

The United States of America files its Response to the Defendant's Motion to Dismiss, and would respectfully show this Court as follows:

Medrano moves to dismiss the indictment charging him with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Medrano argues that § 922(g)(1) is unconstitutional because: (1) it exceeds Congress's power under the Commerce Clause; and (2) it is an unconstitutional restriction of his Second Amendment rights. The first argument should be rejected because it is foreclosed by well-established precedent. The second argument relies on the Supreme Court's recent opinion in *New York State Rifle & Pistol Ass'n Inc. v. Bruen*, 142 S. Ct. 2111 (2022), but *Bruen* did not modify well-established case law holding that convicted felons are not covered by the Second Amendment. To the contrary, six justices in *Bruen* reiterated the constitutionality of felon-dispossession statutes. Accordingly, existing Fifth Circuit precedent upholding § 922(g)(1) remains binding and forecloses the defendant's argument.

## I. Factual Background

On November 8, 2022, Fort Worth Police Department ("FWPD") officers responded to a road rage shooting incident on East Freeway Eastbound in Fort Worth, Texas. *See Complaint*, ECF No. 1 Responding officers observed the victim had suffered a gunshot wound to the back area and was taken to the hospital for immediate medical care, where it was found that he had been shot in the heart. FWPD developed leads on a suspect vehicle and identified the possible suspect as the defendant, Curtis Dwayne Medrano. Medrano's criminal history showed that he was a multi-convicted felon, with felony convictions in 2017 and 2013 for Theft, and in 2013 for Attempted Burglary of a Habitation. *Id.*

On November 9, 2022, FWPD officers took Medrano into custody on outstanding warrants. In a post-*Miranda* custodial interview, Medrano admitted to shooting the victim and using a Taurus pistol in the incident. Medrano advised the Taurus pistol was located inside his vehicle, which was parked at his place of employment. Medrano acknowledged that he was a felon and knew that he was not supposed to possess a firearm. *Id.*

FWPD obtained a search warrant for Medrano's vehicle and located a Taurus, model G3c, 9mm pistol, bearing serial number ACJ274843, on the front passenger side seat inside a blue bag with Medrano's ID inside the bag. An ATF Interstate Nexus Expert later determined that the Taurus firearm had traveled in, or affected interstate commerce, prior to being possessed by Medrano. *Id.*

## II. Procedural Background

A federal complaint and arrest warrant were signed on November 10, 2022, charging Medrano with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(8). *Id.* On February 15, 2023, the grand jury returned an indictment alleging that Medrano violated 18 U.S.C. § 922(g)(1) and § 924(a)(8). *Indictment,* ECF No. 3. On February 16, 2023, a Writ of *Habeas Corpus ad Prosequendum* was issued by this Court. On February 23, 2023, Medrano was brought into federal custody and had his initial appearance and arraignment before the U.S. Magistrate Judge. *See* ECF No. 8. On February 28, 2023, Medrano filed his Motion to Dismiss the Indictment. *See* ECF No. 17. This case is currently set for jury trial on April 3, 2023.

## III. Legal Analysis

Medrano makes a facial challenge to § 922(g)(1) and argues it is unconstitutional because: (1) it exceeds Congress's power under the Commerce Clause; and (2) it is an unconstitutional restriction of his Second Amendment rights based on the Supreme Court's opinion in *Bruen*. His first argument should be rejected as foreclosed. His second argument should likewise be rejected because the defendant misreads *Bruen*. Moreover, existing Fifth Circuit precedent upholding § 922(g)(1) remains good law and forecloses Medrano's arguments.

### A. Defendant Admits his Commerce Clause Argument is Foreclosed

The defendant's first argument that § 922(g)(1) exceeds the commerce clause power should be rejected out of hand. This Court regularly denies motions on this basis through

an electronic order and without a response from the Government. As the defendant concedes, all his grounds are currently foreclosed under Fifth Circuit case law. *See United States v. Hicks*, 958 F.3d 399, 402, n. 1 (5th Cir. 2020); *United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013); *United States v. Rose*, 587 F.3d 695, 706 (5th Cir.2009). Accordingly, this argument fails here as well.

**B. *Bruen* did not extend Second Amendment rights to convicted felons.**

Prior to *New York State Rifle & Pistol Ass'n Inc. v. Bruen,* 142 S. Ct. 2111 (2022), courts analyzed Second Amendment challenges using a two-step test. First, the court determined whether the challenged law impinged upon a right protected by the Second Amendment. If it did not, the law was upheld. If, however, the law impaired a right protected by the Second Amendment, the court would proceed to the second step and "determine whether to apply intermediate or strict scrutiny to the law, and then to determine whether the law survives the proper level of scrutiny." *Hollis v. Lynch*, 827 F.3d 436, 446-47 (5th Cir. 2016) (internal citations omitted.)

The *Bruen* Court concluded that this two-step approach contained "one step too many." 142 S. Ct. at 2127. Although the Supreme Court opined that step one of the test was adequately "rooted in the Second Amendment's text, as informed by history," the Court determined that neither text, history, nor precedent authorized courts to apply "means-end scrutiny" at the test's second step. *Id.* The Court explained that "the very enumeration of [a] right" in the Constitution "takes out of the hands of government—even the [Judiciary]—the power to decide on a case-by-case basis whether the right is *really*

*worth* insisting upon," as the strict scrutiny and intermediate scrutiny tests purportedly empowered judges to do. *Id.* at 2129 (quoting *Heller*, 554 U.S. at 634).

Instead, the *Bruen* Court held that, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 2129–30. To successfully defend a firearms law that restricts such conduct, the government must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

Therefore, under *Bruen*, courts must look to "the Second Amendment's plain text," as informed by "this Nation's historical tradition of firearm regulation" when considering the constitutionality of gun laws. 142 S. Ct. at 2126. Two independent aspects of the Amendment's text demonstrate that it does not prevent legislatures from disarming felons.

First, the government's position is that felons do not fall within "the people" protected by the Second Amendment, a term that the Supreme Court said refers to "members of the political community." *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008). Legislatures have historically had wide latitude to exclude felons from the political community. As Thomas Cooley explained in his "massively popular 1868 Treatise on Constitutional Limitations," *id.* at 616, "the people in whom is vested the sovereignty of the State . . . cannot include the whole population," and "[c]ertain classes have been almost universally excluded"—including "the idiot, the lunatic, and the felon,

on obvious grounds," Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 28–29 (1st ed. 1868). Felons could therefore historically be excluded from "exercis[ing] the elective franchise," *id.* at 29, as well as from other, closely related "political rights"—including the rights to "hold public office," to "serve on juries," and, most relevant here, "the right to bear arms," Akhil Reed Amar, *The Bill of Rights* 48 (1998). Indeed, today it remains the case that "[t]he commission of a felony often results in the lifelong forfeiture of a number of rights" tied to membership in the political community, including "the right to serve on a jury and the fundamental right to vote." *Medina v. Whitaker*, 913 F.3d 152, 155, 160 (D.C. Cir. 2019).

The government acknowledges that a recent panel of the Fifth Circuit held 18 U.S.C. § 922(g)(8)—which prohibits the possession of firearms by someone subject to a domestic-violence restraining order—unconstitutional post-*Bruen*. *See United States v. Rahimi*, 59 F.4th 163 (5th Cir. 2023). The government is seeking further review of that decision. But even if the decision stands, it does not foreclose the government's argument that the Second Amendment does not extend to felons. *Rahimi* interpreted the words "the people" in the Second Amendment to mean "all members of the political community," including a non-felon subject to a restraining order. *Id.* at 172. This leaves room for the conclusion that convicted felons—who are not members of the political community for the reasons discussed above—do not fall within "the people" protected by the Second Amendment.

Second, and more importantly, regardless of whether felons fall within "the people," the right "to keep and bear arms" has never been understood to prevent the disarming of

felons. *Heller* explained that "the Second Amendment was not intended to lay down a 'novel principl[e]' but rather codified a right 'inherited from our English ancestors.'" *Heller*, 554 U.S. at 599 (quoting *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897)). The 1689 English Bill of Rights, which "has long been understood to be the predecessor to our Second Amendment," *id.* at 593, provided that "the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law," *id.* (quoting 1 W. & M., ch. 2, § 7, in 3 Eng. Stat. at Large 441). The wording of that provision indicates that "the legislature—Parliament—had the power and discretion to determine who was sufficiently loyal and law-abiding to exercise the right to bear arms." *Range v. Attorney General*, 53 F.4th 262, 275 (3d Cir. 2022) (per curiam), *vacated upon granting of rehearing en banc*, 2023 WL 118469 (Jan. 6, 2023). Thus, when the "Second Amendment . . . codified [the] *pre-existing* right" to bear arms, *Heller*, 554 U.S. at 592, it codified a right that was "not unlimited," *id.* at 626, and was not understood to extend to lawbreakers.

The Constitution's ratification debates support this understanding of the Amendment's text. In what *Heller* called a "highly influential" proposal, 554 U.S. at 604, a group of Pennsylvania antifederalists advocated for an amendment guaranteeing the right to bear arms "unless for crimes committed, or real danger of public injury." *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc) (quoting 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 662, 665 (1971)). This "Second Amendment precursor[ ]," indicates that the Amendment allowed the legislature to disarm those who had committed serious "crimes" such as felonies. *Heller*, 554 U.S. at 604. Thus, the Amendment's text, understood in its historical context, does not prevent Congress from

disarming felons.

The Supreme Court's authoritative interpretation of the Second Amendment's text confirms this view. *Heller* explained that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626. *Heller* indicated that "prohibitions on carrying concealed weapons" were lawful. *Id.* It said the Amendment applies only to "the sorts of weapons" that were "in common use at the time." *Id.* at 627 (quotations omitted). And the Court wrote that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626–27. Thus, in conducting its "textual analysis" of the Second Amendment, *id.* at 578, the Court saw no inconsistency between the Amendment's text and laws prohibiting "possession of firearms by felons," *id.* at 626.

Moreover, *Heller* defined the right to bear arms as belonging to "law-abiding, responsible" citizens, *Heller*, 554 U.S. at 635, a category which clearly excludes felons. *See United States v. Massey*, 849 F.3d 262, 265 (5th Cir. 2017). *Bruen* echoed that definition, stating no fewer than fourteen times that the Second Amendment protects the rights of "law-abiding" citizens. *Bruen*, 142 S. Ct. at 2122, 2125, 2131, 2133, 2134, 2138, 2150, 2156. And six justices took pains to emphasize that *Bruen* did nothing to upset *Heller*'s and *McDonald*'s reassurances that certain firearms regulations, such as

prohibitions on the possession of firearms by felons, are constitutional. *See id.* at 2157 (Alito, J., concurring) ("Nor have we disturbed anything that we said in *Heller* or *McDonald* . . . , about restrictions that may be imposed on the possession or carrying of guns."); *id.* at 2162 (Kavanaugh, J., joined by Roberts, C.J., concurring) ("Properly interpreted, the Second Amendment allows a 'variety' of gun regulations," including the "'longstanding prohibitions on the possession of firearms by felons'" discussed in *Heller* and *McDonald* (quoting *Heller*, 554 U.S. at 626, 636)); *id.* at 2189 (Breyer, J., joined by Sotomayor and Kagan, JJ., dissenting) ("I understand the Court's opinion today to cast no doubt on that aspect of *Heller*'s holding" permitting felons to be prohibited from possessing firearms).

Unsurprisingly, courts confronting this issue post-*Bruen* have uniformly held that § 922(g)(1) remains constitutional. As a panel of the Third Circuit persuasively explained, legislatures can, consistent with the Second Amendment's text and history, prohibit firearm possession by "those who have demonstrated disregard for the rule of law through the commission of felony." *Range v. Attorney General*, 53 F.4th 262, 266 (3d Cir. 2022) (per curiam), *vacated upon granting of rehearing en banc*, 2023 WL 118469 (Jan. 6, 2023). Although that panel decision has been vacated, its conclusion is consistent with the longstanding consensus among the courts of appeals: "no circuit" has ever "held [18 U.S.C. § 922(g)(1)] unconstitutional as applied" to an individual convicted of an offense labeled a felony. *Medina v. Whitaker*, 913 F.3d 152, 155, 158 (D.C. Cir. 2019) (upholding § 922(g)(1) based on "tradition and history"). Moreover, dozens of district courts nationwide have upheld Section 922(g)(1) as constitutional after *Bruen*. *See Range*, 53

F.4th at 262, n.6 (collecting cases).

Several district courts in Texas have upheld Section 922(g)(1) post-*Bruen*. For instance, in a recent 28 U.S.C. § 2255 petition before this Court, a defendant raised the constitutionality of Section 922(g)(1). *Davis v. United States*, No. 4:22-CV-1000-O, 2023 WL 129599, original op. at *7 (N.D. Tex. Jan. 9, 2023), *attached*. This Court rejected the challenge, ruling that:

> "the constitutionality of § 922(g) is not open to question. *United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003). Recent opinions recognizing the right to keep and bear arms do not suggest that prohibitions on gun possession by convicted felons like Movant are invalid. *See McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010); *Dist. of Columbia v. Heller*, 554 U.S. 570, 626-27, 636 (2008). Contrary to Movant's argument, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), does not suggest that § 922(g) is unconstitutional."

*Id*. at *7.

Likewise, a court in the Southern District of Texas ruled that "18 U.S.C. § 922(g)(1) remains constitutional in the aftermath of *Bruen;* in applying [the *Bruen* Court's] test, this Court finds that felons are not covered under the plain text of the Second Amendment, because they are not within the categories of individuals which the plain text "presumably protects." *United States v. Hill*, No. CR H-22-249, 2022 WL 17069855, at *5 (S.D. Tex. Nov. 17, 2022).

Accordingly, the *Bruen* decision did not undermine the long-standing principle that felon-dispossession statutes are constitutional. Pre-*Bruen* precedent on the constitutionality of Section 922(g)(1) remains good law.

**C. Fifth Circuit precent remains good law, thereby foreclosing the defendant's argument.**

pet. App. 39a

Prior to *Bruen*, the Fifth Circuit repeatedly held in published opinions that Section 922(g)(1)'s prohibition on gun possession by felons does not violate the Second Amendment. *See United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010); *United States v. Anderson*, 559 F.3d 348 (5th Cir. 2009); *see also United States v. Massey*, 849 F.3d 262, 265 (5th Cir. 2017); *Nat'l Rifle Assn's of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 194 n.7 (5th Cir. 2012), *abrogated on other grounds by Bruen*, 142 S. Ct. at 2127–31. *Bruen* did not impugn Fifth Circuit caselaw concluding that felons are categorically a group of people who fall outside the protections of the Second Amendment—*particularly* based on longstanding historical tradition. Indeed, as discussed above, six justices wrote separately to emphasize that *Bruen* did nothing to upset *Heller*'s and *McDonald*'s reassurances that certain firearms regulations, such as prohibitions on the possession of firearms by felons, are constitutional. For that reason, it is clear that *Bruen* does not overrule *Darrington*, *Anderson*, and *Scroggins*. These cases, therefore, remain binding.[1]

And, while the Fifth Circuit has not ruled on the constitutionality of § 922(g)(1) post-*Bruen*, a recent opinion suggests that it has no intention of overturning its long-standing precedent. In *Rahimi*, the Fifth Circuit ruled that § 922(g)(8), which prohibits the possession of firearms by people subject to a domestic-violence restraining order, is

1. Indeed, even if one were to interpret *Bruen* as hinting that the Court was amenable to arguments about the constitutionality of felon-dispossession statutes, that would not be sufficient to overrule existing Circuit Court precedent on the subject. *See United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013) (applying rule of orderliness, explaining that "an intervening change in the law must be unequivocal, not a mere 'hint' of how the Court might rule in the future").

unconstitutional in light of the holding in *Bruen*. *United States v. Rahimi*, 59 F.4th 163 (5th Cir. 2023). The Fifth Circuit, however, distinguished Section 922(g)(8) from long-standing prohibitions on the possession of firearms by convicted felons. It emphasized that the Supreme Court wrote in *Heller* that its opinion "should not 'be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings ...." *Id*. at 171 (quoting *Heller* at 626–27). It then tied that opinion to *Bruen*, writing that "*Heller's* reference to 'law-abiding, responsible' citizens meant to exclude from the Court's discussion groups that have historically been stripped of their Second Amendment rights. *Bruen's* reference to 'ordinary, law-abiding' citizens is no different." *Id*. The opinion in *Rahimi*, therefore, affirms the conclusion that *Bruen* did not cast doubt on the constitutionality of § 922(g)(1). *Darrington*, *Anderson*, and *Scroggins* remain good law.

Several district courts in Texas have concluded that pre-*Bruen* Fifth Circuit precent on § 922(g)(1) remains binding and forecloses any challenge to the constitutionality of the statute. For instance, a court in this district recently denied a constitutional challenge to § 922(g)(1), ruling that "the Fifth Circuit has repeatedly held that § 922(g)(1) does not violate the Second Amendment. This court is 'not free to overturn' that biding Fifth Circuit presentence, even if *Bruen* may call that precent into question." *United States v. Demonya Marquise Swarn*, 3:22-CR-437-M, ECF No. 20, at 1 (N.D. Tex. Feb. 10, 2023) (quoting *In re Bonvillian Marine Serv., Inc.*, 19 F.4th 787, 789 (5th Cir. 2021])), *attached*.

Similarly, a district court in the Western District of Texas rejected a motion to

dismiss a Section 922(g)(1) charge because it was "'not free to overturn' the Fifth Circuit's pre-*Bruen* decisions upholding Section 922(g)(1). This Court must instead 'f[ind] itself bound' by those precedents, reject Defendant's challenge, and leave it to the Fifth Circuit to decide for itself whether its decisions survive *Bruen.*" *United States v. Jordan*, No. EP-22-CR-01140-DCG-1, 2023 WL 157789, at *7 (W.D. Tex. Jan. 11, 2023) (internal citations omitted); s*ee also United States v. Grinage*, No. 21-CR-00399, 2022 WL 17420390, at *3 (W.D. Tex. Dec. 5, 2022) (concluding that *Emerson, Scroggins*, and *Anderson* all appropriately "relied on a textual and historical analysis to find § 922(g)(1) constitutional," and therefore that "[n]othing in the *Bruen* decision calls into question the precedential effect of Fifth Circuit decisions finding § 922(g)(1) constitutional based on the Second 'text and history").

Accordingly, Fifth Circuit precedent remains binding and the defendant's argument is foreclosed.

## IV. Conclusion

Section 922(g)(1) has repeatedly been upheld as constitutional under the commerce clause and Second Amendment. Felon-dispossession laws are permitted by "the Second Amendment's plain text," as informed by "this Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2126. While the Supreme Court and the Fifth Circuit have recently struck down other firearms regulations, these courts have gone to great lengths to emphasize that their holdings do not call into doubt the constitutionality of prohibitions on the possession of firearms by felons. The long-standing tradition of felon dispossession statutes is rooted in American history and has not been undermined by any

court. Existing Fifth Circuit case law affirming the constitutionality of § 922(g)(1) remains good law and forecloses the defendant's argument. His motion should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2023, I electronically filed the foregoing document with the clerk for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

*s/ Levi Thomas*
LEVI THOMAS
Assistant United States Attorney

# UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

v.

CURTIS DWAYNE MEDRANO

**JUDGMENT IN A CRIMINAL CASE**

Case Number: 4:23-CR-00042-O(01)
U.S. Marshal's No.: 45098-510
Levi Thomas, Assistant U.S. Attorney
Christopher Weinbel, Attorney for the Defendant

On March 15, 2023 the defendant, CURTIS DWAYNE MEDRANO, entered a plea of guilty as to Count One of the Indictment filed on February 15, 2023. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 18 U.S.C. § 922(g)(1) and§ 924(a)(8) | Possession of a Firearm by a Convicted Felon | 11/09/2022 | One |

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of $100.00 as to Count One of the Indictment filed on February 15, 2023.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed July 7, 2023.

REED O'CONNOR
U.S. DISTRICT JUDGE

Signed July 7, 2023.

## IMPRISONMENT

The defendant, CURTIS DWAYNE MEDRANO, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **ONE HUNDRED TWENTY (120) MONTHS** as to Count One of the Indictment filed on February 15, 2023. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. 1755817D and 1755820D out of the Criminal District Court No. 2, Tarrant County, Texas.

The Court makes a non-binding recommendation to the BOP that Defendant, if appropriately classified, be allowed to serve his term of imprisonment at an FCI Facility that can accommodate his medical needs.

The defendant is remanded to the custody of the United States Marshal.

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) YEARS** as to Count One of the Indictment filed on February 15, 2023.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

( 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
( 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
( 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
( 4) You must answer truthfully the questions asked by your probation officer.
( 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
( 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
( 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If

notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

( 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

( 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

(10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

(11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

(12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

(13) You must follow the instructions of the probation officer related to the conditions of supervision.

In addition the defendant shall:

not commit another federal, state, or local crime;

not illegally possess controlled substances;

cooperate in the collection of DNA as directed by the probation officer;

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

take notice that if this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment;

participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least $25 per month; and,

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least $25 per month.

**FINE/RESTITUTION**

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

**FORFEITURE**

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: Any firearm and ammunition involved in or used in the knowing commission of the offense, including but not limited to, the following: A Taurus, Model G3c, 9-millimeter pistol, bearing Serial No. ACJ274843, and all accompanying magazines and accessories.

**RETURN**

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
United States Marshal

BY _____
Deputy Marshal